IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO. 2 OF 2000.

1. Union of India,
   represented by Commander Works
   Engineers (Navy),
   Vasco-da-Gama, Goa.

2. The Garrison Engineer (Project)
   Vasco-da-Gama, Goa. .... Appellants.

Versus

M/s Swanand Engineer,
a Partnership Fsdirm,
Through its Attorney
Mr. Sunil V. Deshpande,
Sharada, Cardozo Wado,
Taleigao, P.O. Caranzalem,
Goa. .... Respondent.

Mr. J. Vaz, Addl. Central Government Standing Counsel for the Appellants.

Mr. V. P. Thali, Advocate for the Respondent.

CORAM: DR. S. RADHAKRISHNAN, J.

DATE: 7th OCTOBER, 2006.

ORAL JUDGMENT:

The learned Counsel appearing on behalf of the respondent had raised a preliminary objection that the very application filed by the appellants herein under Sections 30 and 33 of the Arbitration Act, 1940 (hereinafter referred to as the said Act) before the learned Addl. Civil Jduge, S.D., Vasco-da-Gama itself was clearly time barred and as such the

learned Addl. Civil Judge S.D., Vasco-da-Gama could not have entertained the aforesaid application at all and pass the order therein.

2. In that behalf Mr. Thali, the learned Counsel for the respondent pointed out from the record that the award was duly made and signed by the Sole Arbitrator on 4th December, 1997. On the very same day notice under Section 14(1) of the said Act was issued to the appellants as well as the respondent. Mr. Thali also pointed out that the award was duly filed before the learned Addl. Civil Judge S.D., Vasco-da-Gama on 26th December, 1997 by the respondent herein and the same was duly registered on the same day. It appears that the Court issued a notice on 3rd January, 1998 to all the parties with regard to the aforesaid filing of the award. The present appellants were duly served with the aforesaid notice of filing of award in Court on 13.1.1998. Mr. Thali pointed out in the light of the provisions of Section 14(2) of the said Act the appellants ought to have filed their application under Section 30 r/w Section 33 of the said Act on or before 12th February, 1998. However, it appears that the application raising objections with regard to the award under Section 30 r/w Section 33 of the said Act were actually filed only on 20th February, 1998, as such, the same was clearly barred by limitation. Mr. Thali also emphasized that no application for condonation of delay was made by the appellants herein before the Addl. Civil Judge S.D., Vasco-da-Gama and, as such, he

contended that the said application was clearly barred by limitation, and the learned Addl. Civil Judge, Senior Division had no jurisdiction to hear the same.

3. Mr. Thali pointed out that as per Section 40(2) of the said Act read with Article 119(b) of the Limitation Act any application to set aside an award has to be filed within thirty days from the date of service of the notice of filing of the award. Mr. Thali pointed out that the appellants are duly served with the award of the Court on 13.1.1998, whereas the last date for filing was 12th February, 1998. However, the appellants had filed objections only on 20th February, 1998 and had not filed any application seeking condonation of delay before the said Addl. Civil Judge S.D., Vasco-da-Gama. Mr. Thali also brought to my notice that before the said Court the respondent herein had specifically raised a preliminary objection that the application was barred by limitation and therefore the same cannot be entertained by the Court. Mr. Thali contended that inspite of the same, the Court has not decided the issue of limitation at all.

4. Mr. Thali in that behalf referred and strongly relied on Section 3 of the Limitation Act, 1963 which imposes a duty on the part of the Court to decide the issue of limitation even though the same is not set up as a defence. On the contrary, the present case the learned Counsel submitted

that the same was clearly set out by way of preliminary objection.

5. Mr. Thali in that behalf contended that the said Court had no jurisdiction to entertain the application as it was clearly time barred. The said Court without application for condonation of delay on record, could not have entertained the said application. In that behalf Mr. Thali strongly referred to and relied upon a judgment of the Supreme Court in ***Ramesh Chand Sharma v. Udham Singh Kamal and others (AIR 1999 S.C. 3837)*** wherein this issue has been squarely dealt with in paragraph 7 and reads as under :-

> " 7. On perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the O.A. filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled, see Secretary to Government of India v. Shivram Mahadu Gaikwad, 1995 Supp (3) SCC 231. "

6. Mr. Thali referred to another Supreme Court judgment in ***Secretary to Govt. of India and others v. Shivram Mahadu Gaikwad (1995 Supp (3) SCC 231).*** In the said judgment also in paragraph 2 the following were the observations of the Supreme Court :-

> " 2. ..... When we turn to the judgment of the Tribunal we find that there is no mention about the question of limitation even though it started in the face. It would immediately occur to anyone that since the order of discharge was of 7-10-1986 and the application was filed in 1990, it was clearly barred by limitation unless an application for condoning the delay was made under Section 21(3) of the Administrative Tribunals Act. No such application was in fact made. Even if it was the contention of the employee that he was suffering from schizophrenia, that could have been projected as a ground for condonation of delay under sub-section (3) of Section 21 of the said statute. Even otherwise without insisting on the formality of an application under Section 21(3) if the Tribunal had dealt with the question of limitation in the context of Section 21 we may have refrained from interfering with the order of the Tribunal under Article 136, but it seems that the Tribunal totally overlooked this question which clearly stared in the face. Even the employee made no effort to explain the delay and seek condonation. We find no valid explanation on record for coming to the conclusion that the case for condonation of delay is made out. In the circumstances, there is no doubt that the application was clearly barred by limitation.

> It is also difficult to understand how the Tribunal could have awarded full back wages even for the period of delay for which the employee was solely responsible. However, since application itself is barred by limitation under Section 21 of the Administrative Tribunals Act, it deserves to be dismissed. ”

7. Finally Mr. Thali also referred to a Judgment of the learned Single Judge of this Court in ***Ballumal A. Jaisingh v. M/s. J.J. Builders & Others (2003) 3 Mah. L.J. 239*** dealing with the very same issue of Court entertaining an application under Section 30 of the said Act when the same was clearly barred by limitation, wherein this Court has also clearly held after relying on the Supreme Court Judgment, with regard to an application under Section 30 of the said Act, if it is filed beyond the period of limitation prescribed under Section 119-B of the Indian Limitation Act, 1963 the Court had no jurisdiction to entertain the same, as the action of the Court was without jurisdiction and the learned trial Judge had exercised the jurisdiction not vested in him by law and as such the order was set aside.

8. Under the aforesaid facts and circumstances, the impugned judgment and order passed by the learned Addl. Civil Judge S.D., Vasco-da-Gama dated 28th October, 1999 is totally without jurisdiction. Hence the same is set aside. As a consequence even the decree passed in pursuance to the said order also stands set aside. The above Appeal has been decided on

the aforesaid preliminary objection alone.

9. The above Appeal stands disposed of accordingly, however with no order as to costs. It is made clear that both the parties are at liberty to adopt appropriate proceedings as they may be advised.

Dr. S. RADHAKRISHNAN, J.

sl.